

The complaint

Mrs T is unhappy that Legal and General Assurance Society Limited ('L&G') cancelled her life insurance policy which included terminal illness cover ('the policy').

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. I'll focus on giving the reasons for my decision.

What I've decided – and why

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L&G's decision to cancel the policy

When determining this issue, I've taken into account the relevant ABI Code of Practice for managing claims for individual and group life, critical illness and income protection insurance products ('the ABI Code of Practice').

I've also considered The Consumer Insurance (Disclosure and Representations) Act 2012 ('CIDRA') as I'm satisfied this is relevant law in this case. CIDRA requires consumers to take reasonable care not to make a misrepresentation when taking out a consumer insurance contract. The standard of care is that of a reasonable consumer.

And if a consumer fails to do this, the insurer has certain remedies provided the misrepresentation is - what CIDRA describes as - a qualifying misrepresentation. For it to be a qualifying misrepresentation the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the misrepresentation.

CIDRA sets out a number of considerations for deciding whether the consumer failed to take reasonable care. And the remedy available to the insurer under CIDRA depends on whether the qualifying misrepresentation was deliberate or reckless, or careless.

L&G was contacted at the end of 2023 and informed that Mrs T had sadly been diagnosed with cancer. Based on the timeline events given to L&G, it obtained a medical report to see whether this had any impact on the policy which started a few months before.

L&G concluded that Mrs T didn't accurately answer questions about her health and medical history when applying for the policy. Had she done so, L&G says it wouldn't have offered the policy at the time. So, it cancelled the policy. I know Mrs T will be very disappointed, but for the reasons set out below, I'm satisfied L&G has acted fairly and reasonably when doing this.

The application form Mrs T completed dated August 2023 says:

When answering the following questions, if you're unsure whether to tell us about a medical condition, please tell us anyway.

Apart from anything you've already told us about in this application, during the last 2 years have you been in contact with a doctor, nurse or health professional for:

Any condition affecting your stomach, oesophagus or bowel, for example Chron's disease, ulcerative colitis? Please ignore diarrhoea, food poisoning, sickness or vomiting, stomach bug or upset, provided no hospital investigation was advised or completed.

I'll refer to this as the stomach question and I'm satisfied the question is clear. It's reflected that Mrs T answered 'no'.

I'm satisfied that L&G has fairly and reasonably concluded that Mrs T should've answered 'yes' to this question and that she made a misrepresentation.

Mrs T says that she'd experienced bloating related issues and more frequent need for the toilet since early 2023. And shortly before applying for the policy, Mrs T accepts that she saw a doctor about bloating, diarrhoea and feeling tired/exhausted. These symptoms had been ongoing since the start of 2023. She also accepts that she had some abdominal discomfort. Blood and stool tests were undertaken and ruled out food intolerance. Mrs T was told that she had anaemia.

Mrs T did declare and answer questions about anaemia when applying for the policy.

However, given what's asked in the stomach question, I'm also satisfied that she should've answered 'yes' to it. Although anaemia had been discovered as a result of the appointment she had shortly before the policy started, I'm satisfied that L&G has fairly concluded that this didn't explain away the bloating and discomfort she'd been experiencing in her abdomen.

I've also considered that Mrs T says she'd been experiencing diarrhoea and that the stomach question says this doesn't need to be disclosed in certain circumstances. However, Mrs T was also experiencing bloating and discomfort in her abdomen, so I'm satisfied a reasonable person would've answered yes to the stomach question, given the other symptoms she was experiencing.

I'm persuaded the answer to this question mattered to L&G. It's provided underwriting evidence that it wouldn't have accepted the application at the time. The medical evidence supports that Mrs T's symptoms were ongoing at the time of application (even if intermittent) and without established cause and in such circumstances, I'm satisfied that it wouldn't have offered the policy to Mrs T and so the misrepresentation was a 'qualifying' one.

When making this finding, I've taken into account that Mrs T's financial advisor, who arranged the policy for her, says it has subsequently carried out a dummy application and it discovered that the policy would've still been offered if the Mrs T had answered 'yes' to the stomach question.

However, look at the dummy application, only bloating has been included under the follow-up questions to the stomach question. One of the sub-questions asks: 'have you another condition or illness to tell us about under this heading?' and it's been answered 'no' on the dummy application.

L&G has explained that had other conditions been included such as abdominal pain/discomfort and increased faecal frequency, this would've resulted in a different outcome. Given what I've seen from L&G and my experience that it's not unusual for insurers to postpone offering similar insurance policies when symptoms are ongoing at the time of application and no cause has been found, I'm satisfied on the balance of probabilities that the policy wouldn't have been offered at the time.

L&G hasn't said whether it treated the misrepresentation as reckless or careless, but it says it did refund the premiums paid for the policy after it was cancelled. It wouldn't have needed to do that if it had treated the misrepresentation as deliberately or recklessly made. So, I think it's fair for me to assume that the misrepresentation has been deemed careless. And I'm satisfied that's a reasonable conclusion for L&G to reach. It's in line with how the ABI Code of Conduct sets out what may amount to a careless misrepresentation.

I've looked at the actions L&G can take in line with CIDRA if a qualifying misrepresentation was careless. L&G can do what it would've done had the misrepresentation not been made. As I'm satisfied that the policy wouldn't have been offered at the time, I find that L&G has acted reasonably by cancelling / voiding the contract of insurance and refunding the premiums.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 4 February 2025.

David Curtis-Johnson
Ombudsman